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Voices of the Condemned: A Comparative Study of the Testimonies of Death Row Exonerees and Slave Narratives

I. Introduction

Since 1973, 146 people have been exonerated from death rows across the United States of America, and several others have had their charges dropped and have been released without being formally exonerated.¹ Many of these individuals now play an important role in the movement to abolish capital punishment. Exonerees and other survivors of death row speak and write about their experiences of being wrongly sentenced to death, and they educate the public about the problems with capital punishment. When Maryland repealed its death penalty statute in 2013, several legislators cited the testimonies of exonerees as a reason for casting a vote in favor of abolition.² Delegate Barbara A. Frush expressly rescinded her support for capital punishment after speaking with Kirk Bloodsworth, who had been exonerated from Maryland's death row a decade earlier.³

There is scant research, though, on the role of exonerees as abolitionists. This is likely because the role of former death row inmates in the anti-death penalty movement is a relatively recent phenomenon. For example, "Witness to Innocence," an organization run by exonerees with the aim of empowering exonerees to take a leading role in promoting the abolition of capital punishment, was only set up in 2003.⁴ This article looks at how the spoken and written works of exonerees could be more effective as tools of abolitionism. To understand how exonerees can have greater impact, their works are compared with the narratives of another group of people who, once freed from the institution that had wronged them, also fought for its abolition. In the 1800s, freed slaves conducted speaking tours and

published accounts of their captivity, and these “slave narratives” contributed to efforts to abolish slavery in the US.⁵ The secondary literature on the slave narratives, and on the role of these narratives in the movement to abolish slavery, is vast, and can be used to shed light on the actual and potential role of death row exonerees in the contemporary movement to abolish the death penalty.

There are a number of similarities between the “slave narratives” and what I term the “exoneree testimonies.”⁶ They both tell autobiographical stories of lives in captivity, and eventual escapes to freedom. They both describe brutal living conditions in captivity, and they both explore the joys and difficulties of living a life of freedom following years of confinement. They also share comparable purposes: to varying extents, the narratives and the testimonies both attempt to sway the reader towards the abolitionist point of view, whilst simultaneously serving cathartic purposes for the writer. The methods that are adopted by the former slaves and the exonerees for achieving their goals are also similar. The slave narratives were particularly adept at humanizing slaves, thus gaining the readers’ empathy. They were also successful at appealing to their readers’ values, in order to demonstrate to supporters of slavery that the institution was at odds with the values that they held dear, and to demonstrate that slavery damaged the wider community. Exonerees also adopt these narrative and rhetorical devices, but it is suggested in this article that they can learn from the narratives how to be more effective when doing so. For example, it is suggested that exonerees can and should forge closer relationships with other people who can speak about the death penalty from personal experience, such as the organization “Murder Victims’ Families for Reconciliation,”⁷ and former executioners and prison wardens who now speak out against capital punishment, in order to emphasize the damage that the death penalty does to the wider community.

Part II of this paper provides an outline of the broader relationship between slavery and the modern death penalty, to support the contention that the exoneree testimonies can be analyzed in light of the slave narratives. In Part III, the narratives and the testimonies are placed in their wider abolitionist contexts, and in Part IV, various testimonies of death row exonerees are examined in light of existing analyses of slave narratives, in order to ascertain the lessons that today's exonerees can learn from the narratives.

II. The Relationship Between Slavery and the Death Penalty

There are at least three historical and symbolic connections between the pre-Civil War institution of slavery and the contemporary death penalty: racism, geographical location, and the respective abolitionist movements. The following provides a brief overview of each.⁸

1. Racism⁹

In antebellum America, the death penalty was disproportionately imposed on slaves, since capital punishment was an important tool for controlling the slave population and preventing slave rebellions. After all, threats of imprisonment would be rather meaningless to those who already lived in captivity. In Virginia, for example, there were 66 crimes for which a slave could be executed, yet just one crime for which a white person could be executed.¹⁰ The racial discrimination in the application of the death penalty was therefore both legal and transparent. These inequities should have been redressed by the abolition of slavery and the enactment of the Fourteenth Amendment, but even though the law no longer formally allowed for such disparities after 1868, black people continued to be subjected to the death penalty at a greater rate than white people. The death penalty was used, alongside lynching, as a substitute for slavery and as a means of controlling a free, but feared, black population. It

was common for all-white juries to be empanelled to hear cases against black defendants and for those juries to sentence black defendants to death after unfair trials.¹¹

Once again, the racial disparities should have come to an end after the United States' Supreme Court cases of *Furman v Georgia*¹² and *Gregg v Georgia*¹³ in 1972 and 1976 respectively. These cases set out the requirement that death sentences must not be handed down arbitrarily or discriminatorily. However, recent studies have shown that racial disparities still exist, as individuals are more likely to be sentenced to death if their victim is white, than if their victim is black.¹⁴ In other words, there is not such a clamor for the ultimate punishment when a black person is killed, mirroring the attitude in antebellum America when black people were considered to be expendable. It is clear, then, that there are "traces of slavery" in the modern death penalty,¹⁵ and it is difficult to disagree with Stephen Bright's description of capital punishment as "one of the nation's most prominent vestiges of slavery and racial violence."¹⁶

2. Geographical location

Another similarity between the two institutions lies in their sites of practice. In 1837, Senator James Calhoun described slavery as a "peculiar institution" because it was practiced uniquely in the Southern states, while the rest of the US and the rest of the world were abolishing slavery.¹⁷ In 2010, David Garland co-opted this phrase when describing the modern death penalty as a "peculiar institution" because, like slavery before it, the death penalty is primarily practiced in the Southern states while the rest of the US and the world turn their backs on capital punishment.¹⁸

3. Abolitionist movements

Perhaps most relevant for this study, though, is the relationship between today's anti-death penalty movement, and the movement that worked to abolish slavery.¹⁹ The racial prejudices that existed in the years following the abolition of slavery compelled descendants of the anti-slavery movement to set up the National Association for the Advancement of Colored People (NAACP) in 1909.²⁰ In 1940, the legal arm of the NAACP – the Legal Defense Fund (LDF) – was established in order to provide legal assistance to black people who were caught up in the criminal justice system. The LDF lawyers who assisted black people facing capital charges soon realized that they could not in good conscience stand by when white people were facing death sentences,²¹ and the NAACP-LDF soon began campaigning for the complete abolition of the death penalty regardless of the race of the people involved. The organization continues to play a prominent role in the anti-death penalty movement today, and it is in this sense that today's anti-death penalty movement is historically and directly linked to the antebellum anti-slavery movement.

It is perhaps surprising, then, that there is a dearth of literature that compares the strategies of the two abolitionist movements. This lack of scholarship is a shame because although slavery was practiced on a much larger scale, and involved a much larger percentage of the population than the death penalty does today, there are sufficient links between the two institutions, and sufficient links between their respective abolitionist movements, to warrant such a comparative study.

III. Situating the Narratives and the Testimonies in their Respective Abolitionist Movements

If we accept that there are sufficient links between the two institutions and their respective abolitionist groups, then we need to be clear about the similar work that the slave narratives

and the exoneree testimonies do for their abolitionist movements. In short, the slave narratives lent a degree of authenticity to the arguments made by white abolitionists who had not experienced slavery but nonetheless criticized it for its brutality. The testimonies of exonerees likewise add a voice of experience to the arguments made by abolitionists who have not had first-hand experience of the death penalty.

Death penalty abolitionists have provided a myriad of arguments for ending capital punishment, including moral objections that are based on concepts of human rights and the sanctity of life, and objections based on more procedural aspects of capital punishment, such as the costs of administering the death penalty, the arbitrariness in the application of capital punishment, racial discrimination, and the risk of error. The risk of error is an argument that carries considerable political weight,²² and exonerees are in a unique position to speak about how innocent people can find themselves wrongly sentenced to death. They can speak with authenticity about the difficulties with the appeals process, and they can show that wrongful convictions have a long-lasting effect on innocent people, thus countering the claims of those who say that exonerations merely prove that “the system works.”²³ The testimonies of death row exonerees can also speak to the broader problems with the death penalty. Clarence Brandley, for example, has explained how racism led to his wrongful conviction,²⁴ and Gary Drinkard has explained how inadequate defense lawyers, rather than guilt, sent him to death row.²⁵ Shareef Cousin has shown how exonerees can speak from experience about the problems with capital punishment: “Take it from me, someone who lived alongside guys on death row: The system does not identify and sentence ‘the worst of the worst’ to death – just the most powerless.”²⁶ In this sense, exonerees can show that wrongful convictions are not isolated mistakes, but are instead indicative of systematic failings, thus adding to calls for abolition.

Anti-death penalty activists have also developed a “new abolitionism,”²⁷ which focuses on what the death penalty does to the wider political community. According to Austin Sarat: “The question to be asked about state killing is not what it does for us, but what it does *to* us.... State killing diminishes us by damaging our democracy, legitimating vengeance, intensifying racial divisions, and distracting us from the challenges [that America faces].”²⁸ Just as the slave narratives showed that slavery posed a threat to the cherished values of liberty and freedom, so the exoneree testimonies can show that the death penalty poses a threat to the wider community’s values. This is because every time the state comes close to executing an innocent person, confidence in democratic political and legal institutions is weakened.²⁹

Before explaining how the exoneree testimonies can make these arguments and serve these abolitionist purposes, it is worth noting that it is not feasible to compare every slave narrative with every exoneree testimony. Various texts and speeches have therefore been selected for illustrative purposes. Frederick Douglass’ *Narrative of the Life of Frederick Douglass*³⁰ is given particular attention because it is one of the most famous of the slave narratives, and Solomon Northup’s *Twelve Years a Slave*³¹ is considered because it is an account of an individual who was wrongly taken into slavery, and is therefore more comparable to the exoneree testimonies than many other narratives.³² From the exoneree testimonies, Damien Echols’ *Life After Death*,³³ and Nick Yarris’ *Seven Days to Live*³⁴ are considered in depth. Echols’ book serves as a useful comparison to Douglass in the sense that his case is one of the most famous cases of wrongful convictions in the United States,³⁵ even though there is some difficulty with classifying Echols as an exoneree.³⁶ Yarris’ memoir serves as a useful comparison to Northup’s memoir because their titles, with their emphasis on the passage of time, are strikingly similar. This is not to say that other texts and oral testimonies are not useful, and several other writers and speakers from both groups are

referred to throughout this paper too.³⁷ In today's world, exonerees have greater reach by disseminating their stories online, rather than in published books, and thus online interviews and texts by other exonerees are referred to as well,³⁸ even though there is no direct comparison in the field of the slave narratives.

IV. Comparing the Exoneree Testimonies with the Slave Narratives

Many of the slave narratives and exoneree testimonies are autobiographical stories of captivity and escape. David Blight's description of the slave narratives as "ascension stories" can be applied to the exoneree testimonies too since both focus on the rise of the narrator from a lowly captive to a free individual.³⁹ They also tend to be structurally similar, recounting the narrators' experiences in captivity; failed attempts at escape or appeal; the tense and dramatic moments leading to escape or release from captivity; and ending with an account of the joys and difficulties of adapting to a life of freedom. The contents of the two sets of texts are also strikingly similar. Both describe the brutal conditions of a life in captivity, including things such as the poor quality of food, the unpaid labor, the lack of rest, and the despair of living under a threat of death. Nick Yarris recounts the time that he was "forced to beat a man senseless in an exercise cage by the guards for their own personal wager,"⁴⁰ echoing Solomon Northup's recollection of the time he was forced by his master to whip a fellow slave for her alleged transgressions.⁴¹ As "captivity narratives,"⁴² they both explore similar themes of hope and despair, loneliness, separation from families, and being the victim of unspeakable brutality. Both sets of texts also inform the reader about how a belief in some metaphysical being helped the writer endure their hardship.

This is not to say that there are no variations between, or even within, the two sets of texts, though. The slave narratives differ quite widely among themselves in terms of purpose,

content and form. Sterling Lancaster Bland Jr has described how the purpose and focus of the narratives evolved over time, shifting away from stories of African origins and adventures on the high seas, towards more descriptive accounts of the brutality suffered on the farms and plantations of slave states.⁴³ Similarly, not all exonerees' stories are the same. In the *One For Ten* documentary series of interviews with 11 death row exonerees, each one focuses on a different aspect of innocence and the death penalty. Some concentrate on how they came to be wrongfully convicted, while others, such as Joe D'Ambrosio, discuss life after exoneration.⁴⁴ Other exonerees have focused on the appeal process and how they came to secure their freedom, while others have focused on the conditions of life on death row. Despite these differences, all narratives and testimonies can potentially serve at least two purposes. First, they can serve the political purpose of espousing abolitionism; second, they can serve more personal or cathartic purposes. These are considered in turn.

1. The political aims of the narratives and testimonies: public education

The pro-slavery lobby had argued that slavery was both necessary to protect society from inherently dangerous black people, and was beneficial to black people who were biologically incapable of looking after themselves. White abolitionists, by virtue of not being black and not having experienced slavery, struggled to counter these arguments convincingly, and it thus fell to former slaves to demonstrate the fallacy of these claims. August Meier and Elliott Rudwick have pointed out that "[i]n their speeches, and also in autobiographical narratives, Negroes provided the most compelling propaganda against the institution of slavery."⁴⁵ That is, "[t]he central abolitionist project of exposing the evils of the Southern plantation (and the false paternalistic myths supporting it) became the absolute priority of the antebellum slave narrative."⁴⁶ According to Dickson Bruce Jr, "[t]he narratives were intensely political documents.... all were published to play a role in the fight against slavery."⁴⁷

The narratives were able to achieve this political aim by revealing the truth about the institution of slavery to audiences that had hitherto been deprived of accurate information. Former slaves and fugitive slaves provided stark, factual accounts of life in captivity, in order to inform readers about the brutality of slavery. Through the acts of writing and speaking, they were also able to show readers that black people were not the savages and brutes that proponents of slavery made them out to be.

This analysis can be applied to the exoneree testimonies too. Exonerees inform audiences about how the system of capital punishment is broken, and about the brutality of the death penalty. Moreover, they provide the sort of authentic detail that only those who have experienced death row can impart. The organization “Witness to Innocence” explains that “[t]hrough public education, direct action, and legislative and media work, our members challenge the American public to grapple with the problem of a fatally flawed criminal justice system that sends innocent people to death row.”⁴⁸ While the likes of John Thompson reveal to the public the flaws in the system,⁴⁹ others such as Anthony Graves provide information about life in solitary confinement on death row.⁵⁰ However, although the exoneree testimonies often share the same political purposes as the slave narratives before them, it is arguable that the testimonies sometimes focus more on the personal side of the exonerees’ stories.

2. The personal aims of the narratives and testimonies: retaking control

The institution of slavery robbed the enslaved of any sense of individuality, and the acts of writing and speaking about their experiences helped former slaves assert their identity, and enabled them to take control over their own lives and destinies. Narrating their stories also helped former slaves to gain order over the chaos of their lives, and allowed them to declare their authenticity, and the authenticity of their freedom, in their own terms.⁵¹ Comparing

Northup's *Twelve Years a Slave* with Douglass' *Narrative*, Sam Worley writes: "Whereas the firm, confident teleological structure of Douglass' *Narrative* reflects his intention to persuade, the more problematic organization and emphasis of *Twelve Years* can be most usefully seen as reflecting Northup's own difficulty in making sense of his experiences."⁵² This is not to say that Douglass was unconcerned with using the act of writing to assert his identity or for cathartic purposes. In fact, Douglass "elegantly conflates self-expression, self-mastery, and self-advancement."⁵³ The act of writing was "self-liberating" for Douglass.⁵⁴ According to David Blight, "through Douglass's writing and speaking he desperately sought a secure social identity," and he "sought to bring a sense of order to a life of potential chaos."⁵⁵

This desire and need to assert control is mirrored and expanded upon in the exoneree testimonies. Damien Echols' memoir is replete with references to the way in which his identity was destroyed by prison: "The whole purpose was to rob everyone of their identity. Dress everyone exactly alike, give them the same haircut, take away their name, and give them a number. To the prison system, I am not Damien Echols. I am inmate SK931."⁵⁶ Echols laments the fact that he will forever be identified with the case, explaining how he is "often plagued by thoughts that people will think of me only as either someone on Death Row or someone who used to be on Death Row."⁵⁷ He notes: "Sometimes it seems as if I live in a world where I have no identity outside the case. That I am the case and the case is me."⁵⁸ Echols makes it clear that he wants to show readers who he is as a person. He writes that he wants to "create something of lasting beauty, not a grotesque freak show exhibit."⁵⁹ He does not want people to read the book "out of a morbid sense of curiosity"⁶⁰ about death row, and he does "not want to be an oddity, a freak, or a curiosity [or]... the car wreck that people slow down to gawk at." Ultimately, in his words: "I want people to read what I write because it means something to them – either it makes them laugh, or it makes them remember things

they've forgotten and that once meant something to them..."⁶¹ Echols' interest is not in the death penalty per se, and he does not want people to read the book with solely the death penalty in mind. Rather, he wants readers to appreciate what he has learned as a person while behind bars, and the broader human condition as he has come to understand it: "I want to share with people all the wonder and beauty I discovered while trapped in a cell for nearly twenty years."⁶² If Echols can be said to be writing in order to show that he is more than just a former death row inmate, then we can draw comparisons with Frederick Douglass, who shows his readers that he is not "just" a slave when he writes: "You have seen how a man was made a slave; you shall now see how a slave was made a man."⁶³

In *Seven Days to Live*, Nick Yarris also focuses more on what he has learned about the human condition, rather than on the inequities of the death penalty per se: "I have tried to take you on the amazing journey that has been my life so far and also to have shown you what it has taught me as a human being... And so, as well as my life story, I have tried to write about what we all want to find in ourselves that makes us come back from hardships or ugliness. I have also tried to focus on why being decent and loving to others, despite the horrors we have to deal with, matters so much."⁶⁴ This resonates with the ending of Northup's memoir: "Chastened and subdued in spirit by the sufferings I have borne, and thankful to that good Being through whose mercy I have been restored to happiness and liberty, I hope henceforward to lead an upright though lowly life, and rest at last in the church yard where my father sleeps."⁶⁵

There are three reasons why the testimonies of the likes of Echols and Yarris tend to focus more on the personal side of their stories, and do not make polemical statements against the death penalty. First, exonerees have had their identities shaped by inaccurate media reports at the time of their trials and convictions. They must therefore deconstruct audiences' preconceptions, and correct any misrepresentations. Joe D'Ambrosio explains how

information on the Internet can still lead to negative perceptions about him: “Because for one, the Internet. It’s always there, all you have to do is punch in my name and tons and tons of stuff comes up. Luckily for me it’s all good, but it’s still in the back of everybody’s mind. ‘Oh he must have done something or they wouldn’t have done it to him.’”⁶⁶ Although former slaves were also keen to construct an identity, they did not have to battle against specific, individual misrepresentations of themselves, and could focus on how the general institution of slavery, and slaves in general, had been misrepresented to the public.

A second reason for focusing more on the personal story is that today’s exonerees find the process of speaking and writing about their experiences to be cathartic and therapeutic. Echols describes the act of writing as “a catharsis... It’s a purge.”⁶⁷ Yarris states that the act of telling his story “has become part of my own healing.”⁶⁸ Ray Krone, who was exonerated in 2002, has also said that speaking about his experiences “is like therapy to me.”⁶⁹ On occasion, writing and speaking also helped slaves deal with the personal tragedies that they had suffered. For example, the act of narrating *Incidents in the Life of a Slave Girl* helped Harriet Jacobs come to terms with the trauma that she had suffered as a slave, because it allowed her to gain some control: “her narrative provides a mechanism for coming to terms with the painful, almost unspeakable episodes of her own past.”⁷⁰ However, it is unlikely that, in the early nineteenth century, former and fugitive slaves were as explicitly aware of notions of “catharsis” and “therapy” as today’s exonerees are.⁷¹

A third explanation for the exonerees’ focus on the personal story is that exonerees have more editorial control over their testimonies than slaves had over their narratives. Many former and fugitive slaves were illiterate, and thus relied on white amanuenses and the sponsorship and financial assistance of white abolitionists. This meant that many narratives were shaped by white abolitionists’ agenda. It is generally accepted that white abolitionists were patronizing towards blacks, and often assumed that former and fugitive slaves were

incapable of contributing to the abolitionist movement without assistance.⁷² Frederick Douglass recounts how other abolitionists advised him to stick to a factual account of slavery, and to leave the philosophical arguments against slavery to the allegedly more educated, articulate white people.⁷³ Although Douglass was able to resist these pressures, these statements highlight the paternalism of white abolitionists that affected the style and content of many other slave narratives.

Death row exonerees, on the other hand, are not reportedly patronized in this manner, and the autobiographies and speeches of exonerees are not as heavily influenced by other campaigners. Although exonerees require the help of anti-death penalty campaigners, this assistance is more of an enabling nature rather than of a paternalistic nature. This has at least two potential effects on the testimonies as tools of abolitionism. First, it means that the testimonies might enjoy an authentication that the narratives did not, suggesting that the testimonies will be more readily accepted by the public, and thus more effective as tools of abolitionism. One of the consequences of the influence of white abolitionists on the production of the slave narratives was that many readers questioned the veracity of the narratives, claiming that the accounts of slavery contained therein were at best exaggerated, and at worst completely false. Stephanie Smith has explained how Harriet Jacobs' *Incidents of a Slave Girl* was initially discredited because Jacobs did not physically write her memoirs herself.⁷⁴ By taking greater editorial control, exonerees can prevent such skepticism. Having said this, Damien Echols' *Life After Death* has been subject to some concerns about its completeness and accuracy,⁷⁵ and so exonerees might need to seek the sorts of endorsements that slave narrators had. Each of the *One For Ten* videos is narrated by a celebrity, providing endorsements that might resonate with today's public.

A second potential effect of the absence of external influences is that the testimonies might actually be *less* effective as tools of abolitionism, since they lack an express political

aim.⁷⁶ The clear political aims of the narratives shaped the style and content of the narratives, and the style and content were vital to the abolitionist effort. As the following endeavors to show, though, the exonerees' focus on the personal side of their story can actually assist with the political aim of ending the death penalty.

3. Achieving the political aim through the personal approach

Dickson Bruce Jr has noted that “[t]he narratives’ political purposes... contributed to their shape and content.”⁷⁷ Frederick Douglass’ *Narrative*, for example, is expressly polemical, and he makes no attempt to hide his intention of persuading audiences to take action against slavery. He writes: “Sincerely and earnestly hoping that this little book may do something toward throwing light on the American slave system, and hastening the glad day of deliverance to the millions of my brethren in bonds...”⁷⁸ In the Preface to the *Narrative*, William Lloyd Garrison rallies the reader: “Reader! are you with the man-stealers in sympathy and purpose, or on the side of their down-trodden victims?... If with the latter, what are you prepared to do and dare in their behalf? Be faithful, be vigilant, be untiring in your efforts to break every yoke, and let the oppressed go free.”⁷⁹

Not all narratives were polemical, though. It was noted above that Solomon Northup concentrates on his personal story, and *Twelve Years a Slave* is written as a factual account of one man’s experiences, rather than as a polemic about the inherent immorality of the entire system of slavery. At the start of his narrative, Northup tells the reader: “I can speak of Slavery only so far as it came under my own observation... My object is, to give a candid and truthful statement of facts: to repeat the story of my life, without exaggeration, leaving it for others to determine, whether even the pages of fiction present a picture of more cruel wrong or a severer bondage.”⁸⁰ The story contains few references to the institution of slavery as a whole, and he ends his account with a similar statement: “I have no comments to make upon

the subject of Slavery. Those who read this book may form their own opinions of the ‘peculiar institution.’”⁸¹ Sam Worley identifies Northup’s “unwillingness to reduce the complexity of [his] experience to a stark moral allegory.”⁸² In other words, in contrast to Douglass, Northup did not attempt to provide readers with a comprehensive overview of all the wrongs of slavery. Instead, Northup provides readers with a factual account of his personal experiences, and it is left to the reader to form their own opinions about slavery as an institution in light of this account.

Since the exoneree testimonies appear to be more concerned with pursuing cathartic and personal purposes of therapy, rather than reducing their experiences to a “stark moral allegory,” it might be assumed that they will not be particularly effective as tools of abolitionism. However, as explained below, the focus on the personal side of their stories humanizes the story-teller, thus enabling the reader to empathize with them. This in turn helps the story-teller convince the reader that the practice in question is at odds with the values that the reader holds. These two tactics can also be found in the slave narratives, and the exonerees can look to the narratives for guidance on how to most effectively achieve these aims.

a. Humanizing the condemned

As an anti-death penalty strategy, humanizing the condemned death row inmate can be a risky, but sometimes necessary, endeavor.⁸³ On the one hand, drawing attention to the sometimes tragic lives and upbringings that these people have had can evoke understanding, if not necessarily sympathy, from people who would otherwise support executions. On the other hand, sentimentalizing death row inmates and painting them as a “victim” or as a tragic hero,⁸⁴ without regard to the horrific crime that he or she has committed, can be distasteful to say the least, and would be unlikely to sway the minds of those who support capital

punishment. Since exonerees have not committed the horrific crime in question, it is possible for the exoneree to tactfully evoke empathy through the “humanization” process.

As with the slave narratives, the exoneree testimonies introduce the reader to a person who they would not normally encounter. In order to gain the empathy of the reader, then, the writer must demonstrate that they are not so different to each other. The slave narratives achieved this aim by providing vignettes of black people’s life outside captivity in order to show what they were like as a person, and by illustrating that even when in captivity, they were not the brutes and savages that proponents of slavery made them out to be. Solomon Northup emphasized how ordinary his childhood was: “leisure hours allowed me were generally either employed over my books, or playing the violin – an amusement which was the ruling passion of my youth.”⁸⁵ Following his marriage, he notes how his three children “filled our house with gladness. Their young voices were music in our ears.”⁸⁶ These moments serve to amplify the horrors of being taken into captivity. Frederick Douglass was able to garner the empathy of white audiences by portraying himself to be as articulate and educated as a white man. Both Douglass and Northup succeeded in dispelling the myths that slaves were fundamentally different to white people.

Exonerees need to garner the empathy of their audiences, but they also need to dispel the myth that people are somehow at fault for being wrongly sentenced to death. They can do this by focusing on the personal side of their stories and presenting their own personalities in their writing and speeches. In some cases, exonerees can emphasize the “normal” aspects of their childhood and formative years, like Solomon Northup did, in order to amplify the horrors of being wrongfully sentenced to death, and to show that anybody is at risk of being wrongfully convicted. Ray Krone has adopted this approach: “I was a Boy Scout, a postman... I was in the Air Force. If they could do it to me, they could do it to anyone.”⁸⁷ Kirk Bloodsworth points out that he was a Marine before his ordeal on death row, to illustrate

that even revered people can end up wrongfully convicted. Indeed, Samuel Rosenberg, who sponsored the Bill to end the death penalty in Maryland, has explained how Bloodsworth was able to “humanize” theoretical debates about the death penalty by providing a human face to the arguments.⁸⁸

In other cases, exonerees can highlight how their vulnerabilities led to their wrongful conviction. There is considerable evidence to show that vulnerable people are at greater risk of being sentenced to death regardless of the gravity of the crime or their moral culpability,⁸⁹ and exonerees can show that innocent people with these vulnerabilities – which might stem from mental illnesses or childhood traumas, for example – increase the chances of being wrongfully convicted. Nick Yarris recounts how he was raped at the age of seven, which turned him to alcohol and drug dependency. This in turn made him a prime target for the police, thus explaining in part how he came to be wrongfully accused. Echols recounts a childhood of poverty and violence, thus revealing to readers the difficulties that he had during his formative years. This would go some way to correcting the perception of him as being “odd” during his trial,⁹⁰ and demonstrating that vulnerable people are at heightened risk of wrongful convictions.

The second way in which the narratives humanized slaves, and in which the testimonies can humanize exonerees, is through the use of animal imagery, metaphors, and similes. There are remarkable similarities in how slaves and exonerees compare their treatment to the treatment of animals, in order to convey the message that those in captivity are wrongly considered to be sub-human. Frederick Douglass writes: “We were all ranked together at the valuation. Men and women, old and young, married and single, were ranked with horses, sheep, and swine. There were horses and men, cattle and women, pigs and children, all holding the same rank in the scale of being, and were all subjected to the same narrow examination.... We had no more voice in that decision than the brutes among whom

we were ranked.”⁹¹ William Hayden also describes how slaves were bought and sold like animals: “Like an ox brought to the shambles for the scrutiny of butchers, I stood before that flesh-buying crowd....”⁹² Solomon Northup’s narrative uses similar comparators: “Young Master Epps possessed some noble qualities, yet no process of reasoning could lead him to comprehend, that in the eye of the Almighty there is no distinction of color. He looked upon the black man simply as an animal, differing in no respect from any other animal...”⁹³

Describing a prison visit of death row, Damien Echols explains how he too was viewed and treated as an animal: “They do it without any trace of self-consciousness, as if I am an animal that has no idea what’s going on. As if I don’t have the slightest trace of humanity.”⁹⁴ Echols also points out that he shares the same fate as livestock: “It’s all brought me to the conclusion that I am being treated like veal, and for the same reason.”⁹⁵ Yarris also tells the reader how he was treated like an animal. Describing the fear among inmates about a possible transfer to a prison notorious for its tough prison guards, Yarris writes: “I was shivering as I stood there in my handcuffs and leg irons, dressed only in a prison-issue yellow jumpsuit, lined up in the cold night air like a farm animal ready to be transported to the slaughter house.”⁹⁶ Yarris continues: “we are only allowed out on weekdays for our 30 minutes of exercise in these dog kennel-like cages behind the Death Row building – although I wouldn’t put a full-sized animal in a cage like the ones they make us use.”⁹⁷ In an article describing conditions in solitary confinement on Texas’ death row, Anthony Graves writes of “12 years of having my meals slid through a small slot in a steel door like an animal.”⁹⁸

The beatings by slaveowners and their agents are also described in such terms, with Northup explaining how he was treated worse than an animal: “Still he plied the lash without stint upon my poor body, until it seemed that the lacerated flesh was stripped from my bones at every stroke. A man with a particle of mercy in his soul would not have beaten even a dog so cruelly.”⁹⁹ The beatings administered by prison guards are described in similar terms by

Echols: “No charges were ever filed against any of them. After all, it’s not like they were actually abusing people, you know. Just prisoners.”¹⁰⁰ As Echols explains, “The talking heads on television project the image of prisoners as animals, and it’s true. It’s true because the spirit that once made them human has been starved to death, and they become a black hole in human form.”¹⁰¹

Exonerees could perhaps learn from Douglass’ method of turning the tables, and depicting slaveholders as the “true” animals. Douglass described the cruelty of slaveowners towards slaves as “the kick of a jackass, or the barking of a bull-dog.”¹⁰² This was part of Douglass’ attempts to show readers that it was not the slaves who were animals, but that slavery instead dehumanized those who supported and practiced slavery. Douglass is particularly explicit about how the institution of slavery affected the wife of one of his masters. Master Hugh’s wife is described as “a pious, warm, and tender-hearted woman”¹⁰³ at first. However, “[s]lavery soon proved its ability to divest her of these heavenly qualities. Under its influence, the tender heart became stone, and the lamblike disposition gave way to one of tiger-like fierceness.”¹⁰⁴ Exonerees would do well to show how the death penalty and, in particular, the wrongful conviction of innocent people, dehumanizes those who support, implement and administer the death penalty. Echols and Yarris go some way to making this point. Yarris notes how the prison guards lost their sense of humanity: “It was clear that, having spent many years abusing other human beings, all they could do now was keep routine.”¹⁰⁵ However, being more explicit about how those involved in administering the death penalty are at risk of losing their humanity would go some way to shaping readers’ perceptions about the effect of capital punishment on the wider community. This can be achieved by showing audiences how the death penalty is incompatible with the values of the wider community. When Douglass turned the tables on his readers’ orthodox views in the ways described above, he was adopting an approach taken in many of the narratives that

highlighted the incompatibility of slavery with the legal and ethical values that were held by his audiences. As explained in the next section, exonerees can adopt a similar method with respect to the death penalty.

b. Appealing to readers' values

One drawback to concentrating on humanizing the individual slave or exoneree is that the audience might still feel too far removed from the practice in question to take action. A more effective tactic might therefore be to convince the audience that the practice in question directly affects them. A key tactic of the narratives was to highlight the inconsistencies between the values that Americans held dear, and the institution of slavery. Frederick Douglass, for example, compels his audiences to question their own internal value system, and highlights the hypocrisies inherent in slavery. In the antebellum era, concepts of independence, economic freedom, and liberty abound, and former slaves emphasized to their audiences how the institution of slavery was contrary to these values. As Dickson Bruce Jr has noted, "narrators accurately represented slavery as a forced labor system maintained by the continual threat of physical violence. In so portraying slavery, however, the authors went beyond the evocation of brutality to describe a world which ran counter to the most deeply held American ideals of freedom, including the economic notions of freedom that many held dear."¹⁰⁶ Narrators such as Moses Roper made it clear that they cherished these American values: "It is far from my wish to attempt to degrade America in the eyes of Britons. I love her institutions in the Free States..."¹⁰⁷ However, as Roper goes on to state, the institution of slavery was fundamentally at odds with these values.

In terms of the death penalty, there are at least four ways in which exonerees are in a unique position to question the compatibility of the death penalty with the values that their audiences probably hold. First, exonerees can show that capital punishment does not serve

the value of controlling crime. Second, they can question whether the death penalty really provides justice for the wider community. Third, exonerees can show the contradiction between condemning the taking of life while simultaneously imposing death sentences. Fourth, they can illustrate how the broken system of capital punishment weakens democratic and legal institutions. These are considered in turn.

Damien Echols shows that anti-death penalty advocates are not necessarily “soft” on crime: “Don’t get me wrong, I’m no bleeding-heart liberal who believes everyone is a victim and no one is responsible for their actions.”¹⁰⁸ Echols goes on to say that there is something “horribly wrong”¹⁰⁹ with the current penal system, and that the death penalty, from his experience, is not the answer to fixing this system or to reducing violent crime. Exonerees can also illustrate how the clamor to execute leads to the wrongful conviction of the innocent, which in turn means that the real perpetrator is still walking the streets. This is particularly true of the latest two exonerations in September 2014, in which the real perpetrator was able to offend again while the police were knowingly pursuing two innocent men.¹¹⁰

Related to the above point, exonerees can also show how the death penalty does not serve the value of providing justice to the wider community. Not only is the real perpetrator still free, but the death penalty also does not provide justice to those in whose names executions are carried out, and has a negative impact on those who are carrying out executions in the name of the people. On the first point, exonerees can, and do, forge links with “Murder Victims’ Families for Reconciliation,” which is an organization that enables murder victims’ families to speak out against the death penalty in order to ensure that no executions occur in their name. These families can speak with conviction about how executions and the wrongful conviction of the innocent do not bring closure. On the second point, exonerees should reach out to former executioners and prison wardens who now condemn capital punishment for the effects that the execution process has on executioners.

For example, Don Cabana – who oversaw three executions in his capacity as warden at Mississippi State Penitentiary – has expressed the impact that innocence and the death penalty has on those who administer capital punishment. Testifying before the Judiciary Committee of the Minnesota House of Representatives in 1995, Cabana said: “...in the name of justice, in the name of law and order, in the name of retribution, you, and when I say you, I mean, generically, Americans, do not have the right to ask me, or any prison official, to bloody my hands with an innocent person’s blood.”¹¹¹ In recent years, former executioners Allen Ault in Georgia and Jerry Givens in Virginia have also spoken out against capital punishment, citing the issue of innocence,¹¹² and exonerees would do well to forge links with them, in order to show how the flawed system of capital punishment affects those who are asked to carry out executions. It is imperative for exonerees, victims’ families and former executioners and prison wardens to jointly emphasize that the clamor to execute often comes at the cost of ensuring that justice is actually done; at the cost of reducing violent crime; and thus only serves to denigrate the values that are held by supporters of capital punishment. A three-way dialogue that explores the effect of innocence and the death penalty on those who have suffered an unjustifiable killing (murder victims’ families), on those who have been threatened with an unjustifiable killing (exonerees), and on those who are asked to carry out an unjustifiable killing (former executioners), could be exceptionally powerful.

Exonerees are also in a position to show the inconsistencies between condemning murders on the one hand, while supporting the death penalty on the other. Nick Yarris, for example, writes: “Death Row... [inmates] are locked up in solitary confinement, usually for 23 hours a day, and left to rot for years while the state tries to win the right to execute them through the appeals courts.”¹¹³ Yarris paints a picture of state authorities actively seeking to execute an inmate after conviction, whereas the orthodox view is that it is the inmate who is the killer, and who is trying to seek a reprieve through the appeals process. Yarris’ approach

is comparable to that of Frederick Douglass' and Moses Roper's tactic of illustrating the double-standards inherent in the practice in question, as Yarris illustrates the hypocrisy of executing someone in order to show that killing people is wrong.¹¹⁴

On the fourth point, exonerees can show how the conviction of the innocent weakens the democratic and legal institutions that are valued by death penalty supporters. John Thompson, who was exonerated in 2003, recounts the prosecutorial misconduct that led to his wrongful conviction, and explains how the career of the District Attorney in his case was considered to be more important than Thompson's life. This is because the prosecuting lawyers have not faced any ramifications for their misconduct, and have had their careers protected. Thompson remarks: "Our life don't have no value, but their career have value? A career?"¹¹⁵ In saying this, Thompson is showing how the urge to execute is not compatible with traditional American values such as those listed in the US Declaration of Independence, which emphasizes the right to life, but not the right of a District Attorney to protect his or her career.

If reactions to the slave narratives are anything to go by, it is these sorts of observations that will carry most weight, and that should be pursued by exonerees and, indeed, other abolitionists. As Daniel LaChance has noted, abolitionists generally "ought to focus on the failure of capital punishment to live up to the promise of retributive justice it once held."¹¹⁶ LaChance also makes the point that abolitionists should focus on conservative the values that death penalty supporters hold, and demonstrate to such supporters that the death penalty is "another failed government program."

V. Conclusions

There is scope for future research on the comparisons of exoneree testimonies and slave narratives. It would be interesting to compare in more detail, for example, the descriptions of life in captivity, or to compare slaves' accounts of slaveholders with exonerees' accounts of prison guards. Frederick Douglass describes one of his masters as "cruel, but cowardly,"¹¹⁷ and this description is mirrored by Nick Yarris' description of prison guards as "weak men who thrive on control of others to fuel their egos."¹¹⁸ Future research might concentrate on slave narratives and exoneree testimonies from a particular state or region. For now, the main purpose of this piece has been to show that exonerees can learn from the slave narratives.

This study also highlights the possibility for further research into what today's anti-death penalty movement can learn from the anti-slavery movement. The existing literature on comparisons between the two abolitionist movements is sparse, but Bruce Ledewitz¹¹⁹ has briefly outlined some of the anti-slavery tactics that death penalty abolitionists might look to for guidance, inspiration and warnings. Ledewitz highlights the similarities between the colonization movement in antebellum America (which sought to persuade slaveholders to free their slaves and return them to colonies in Africa), with the life without parole movement (which seeks to convince death penalty supporters that life without the possibility of parole is an adequate alternative to capital punishment). Both alternatives, Ledewitz argues, merely replace one unjust practice with another. The use of comparable moral and religious arguments and the comparable legal strategies deployed by the respective abolitionists are also highlighted by Ledewitz.

As a final note, given the connections between slavery and the death penalty generally, it is perhaps unsurprising to find that many slaves and former slaves contemporaneously spoke out against the death penalty. In 1881, Sojourner Truth described the death penalty as "worse than slavery,"¹²⁰ and Frederick Douglass gave a rousing speech

in 1858 in which he described capital punishment as “a mockery of justice.”¹²¹ It is useful to remind ourselves that the death penalty is a vestige of slavery. Other countries have abolished the death penalty precisely because capital punishment was considered to be symbolic of a regretted past. The Constitutional Court of South Africa cited the relationship between apartheid and the death penalty as a reason for abolishing capital punishment,¹²² and West Germany repealed the death penalty in the years following World War Two because of its connections with Nazi Germany.¹²³ As we come closer to understanding the inextricable relationship between the violence of the death penalty in the US today with the violence of antebellum slavery, the closer we will come to understanding the need to abolish the death penalty. It is clear that death row exonerees will play an essential role in the demise of the death penalty, a role as essential as that played by slaves in the demise of slavery.

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² David A. Love, “Abolition in Maryland,” *The Nation*, June 3, 2013.

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http://www.nytimes.com/2013/02/06/us/exonerated-inmate-seeks-end-to-maryland-death-penalty.html?pagewanted=1&_r=1 (Bloodsworth was released from prison in 1993, but was not formally exonerated until 2003)

⁴ See <http://www.witnesstoinnocence.org/about-us.html>. The use of “innocence” in anti-death penalty discourse is also relatively recent. See L.C. Marshall, “The Innocence Revolution and the Death Penalty,” *Ohio State Journal of Criminal Law* 1 (2004) 573-584

⁵ D. Bruce Jr, “Politics and Political Philosophy in the Slave Narrative” in Audrey Fisch, ed., *The Cambridge Companion to the African Slave Narrative* (Cambridge, CUP, 2007) p.28

⁶ I use the word “exoneree” in its widest possible sense, to include those who have been released from death row because of doubts about their guilt, but who have not been officially declared innocent. In some cases, prosecutors convince death row inmates to sign *Alford* pleas, which means that the prosecutor will agree to drop all charges and the inmate can maintain their claim of innocence, but the inmate accepts that a re-trial would likely result in conviction, thus rendering them ineligible for the title “exoneree.” The word “testimony” is also used in its widest possible sense, to include the written and spoken personal stories of those released from death row, as well as other formal and informal statements and speeches. Although I am not using both words in their strict sense, the phrase “exoneree testimony” is convenient for the sake of this article.

⁷ See <http://www.mvfr.org/>

⁸ For a more thorough account of the relationship between slavery and the death penalty, see Charles J. Ogletree Jr and Austin Sarat, eds, *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York, NYU Press, 2006)

⁹ For a more detailed account of racism and the death penalty, see S. Banner, “Traces of Slavery: Race and the Death Penalty in Historical Perspective” in Charles J. Ogletree Jr and Austin Sarat, eds, *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York, NYU Press, 2006). See also M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, The New Press,

2012) for an account of how the effects of slavery are replicated by the racism that runs throughout today's criminal justice system as a whole.

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¹² *Furman v. Georgia*, 408 U.S. 238 (1972)

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¹⁵ Banner, "Traces of Slavery"

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⁵⁶ D. Echols, *Life After Death*, pp.351-352. Slaves were also deprived of their real names, being forced to adopt the names of their owners.

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⁷⁴ S. Smith, "Harriet Jacobs: A Case History of Authentication" in Audrey Fisch, ed., *The Cambridge Companion to the African Slave Narrative* (Cambridge, CUP, 2007) pp.189-200

⁷⁵ M. Perrusquia, "Memoir's missing element: Damien Echols doesn't confront his baffling behaviour," *The Commercial Appeal*, October 7, 2012. <http://www.commercialappeal.com/news/2012/oct/07/memoirs-missing-element/>

⁷⁶ This is probably more relevant to the written memoirs of exonerees, rather than the speeches in which they expressly pursue an abolitionist aim.

⁷⁷ D. Bruce Jr, "Politics and Political Philosophy," p.28

⁷⁸ F. Douglass, *Narrative*, p.109

⁷⁹ F. Douglass, *Narrative*, p.35

⁸⁰ S. Northup, *Twelve Years*, p.1

⁸¹ S. Northup, *Twelve Years*, p.196

⁸² S. Worley, "Solomon Northup," 244

⁸³ H. Haines, *Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972-1994* (New York and Oxford, OUP, 1996) pp.122-130

⁸⁴ H. Haines, *Against Capital Punishment* pp.127-128

⁸⁵ S. Northup, *Twelve Years*, p.3

⁸⁶ S. Northup, *Twelve Years*, p.7

⁸⁷ "Ray's Story: A Death Penalty Mistake", The Atlantic Philanthropies.
<http://www.atlanticphilanthropies.org/rays-story-death-penalty-mistake>,

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- ⁸⁸ R. Cassie, “An Innocent Man,” *Baltimore Magazine*, December, 2013.
<http://www.baltimoremagazine.net/2013/12/former-inmate-kirk-bloodsworth-won-the-battle-to-end-capital-punishment-in-maryland>
- ⁸⁹ R.J. Smith, S. Cull and Z. Robinson, “The Failure of Mitigation?” *Hastings Law Journal* 65(5) (2014) 1221-1255
- ⁹⁰ M. Perrusquia, “Memoir’s missing element”
- ⁹¹ F. Douglass, *Narrative*, p.64
- ⁹² W. Hayden, “Narrative of William Hayden, Containing a Faithful Account of his Travels for a Number of Years, while a Slave, in the South, 1846” (reprinted in S.L. Bland Jr, ed., *African American Slave Narratives*, p.219)
- ⁹³ S. Northup, *Twelve Years*, p.156
- ⁹⁴ D. Echols, *Life After Death*, p.197
- ⁹⁵ D. Echols, *Life After Death*, p.336
- ⁹⁶ N. Yarris, *Seven Days*, p.60
- ⁹⁷ N. Yarris, *Seven Days*, p.76
- ⁹⁸ A. Graves, “When I Was on Death Row,”
- ⁹⁹ S. Northup, *Twelve Years*, p.18
- ¹⁰⁰ D. Echols, *Life After Death*, p.260
- ¹⁰¹ D. Echols, *Life After Death*, p.389
- ¹⁰² F. Douglass, *Narrative*, pp.195-196
- ¹⁰³ F. Douglass, *Narrative*, p.59
- ¹⁰⁴ F. Douglass, *Narrative*, pp.59-60
- ¹⁰⁵ N. Yarris, *Seven Days*, p.71
- ¹⁰⁶ D. Bruce Jr, “Politics and Political Philosophy,” p.37
- ¹⁰⁷ M. Roper, “A Narrative in the Adventures and Escape of Moses Roper,” (reprinted in S.L. Bland Jr, ed., *African American Slave Narratives*, p.71)
- ¹⁰⁸ D. Echols, *Life After Death*, p.337
- ¹⁰⁹ D. Echols, *Life After Death*, p.337
- ¹¹⁰ R. Oppel Jr, “As Two Men Go Free, a Dogged Ex-Prosecutor Digs In,” *New York Times*, September 7, 2014.
<http://www.nytimes.com/2014/09/08/us/as-2-go-free-joe-freeman-britt-a-dogged-ex-prosecutor-digs-in.html>

¹¹¹ Testimony available at http://www.theadvocatesforhumanrights.org/uploads/cabana_2.pdf See also D.

Cabana, *Death at Midnight: The Confession of an Executioner* (Boston, Northeastern University Press, 1998)

¹¹² See S. Sackur, “Electric chair haunts US former execution chief,” *HARDTalk*, February 23, 2014.

<http://www.bbc.co.uk/news/magazine-26273051>. In Virginia, Jerry Givens has said: “When I found out they had some innocent people on death row that came almost hours before I had to take their life, then I knew we had to change. That would be on me for the rest of my life.” J. Givens, “I was Virginia’s Executioner from 1982 to 1999. Any questions for me?” *The Guardian*, November 21, 2013.

<http://www.theguardian.com/commentisfree/2013/nov/21/death-penalty-former-executioner-jerry-givens>

¹¹³ N. Yarris, *Seven Days*, p.58

¹¹⁴ This has been popularized by the aphorism: “Why do we kill people who kill people to show that killing people is wrong?” This, it should be noted, is not an argument that exonerees can provide unique detail about.

¹¹⁵ Interview with John Thompson, One For Ten. <https://www.youtube.com/watch?v=RvEYmMrRxZw> (at 5.06)

¹¹⁶ D. LaChance, “What will doom the death penalty?” *New York Times*, September 8, 2014.

http://www.nytimes.com/2014/09/09/opinion/what-will-finally-doom-the-death-penalty.html?_r=0

¹¹⁷ F. Douglass, *Narrative*, p.68

¹¹⁸ N. Yarris, *Seven Days*, p.287

¹¹⁹ B. Ledewitz, “Abolition Then and Now” *Southern Voices*, Spring 1989, pp.44-46

¹²⁰ Remarks published in *Battle Creek Nightly Moon*, June 8, 1881.

<http://www.sojournertruth.org/Library/Speeches/#PUNISHMENT>

¹²¹ F. Douglass, “Capital Punishment is a Mockery of Justice” in John Blassingame (ed.), *The Frederick Douglass Papers* (New Haven, CT and London: Yale University Press, 1985) vol. 3, pp.242-248

¹²² *State v Makwanyane*, [1995] ZACC 3, 1995 (3) SA 391

¹²³ Article 102, Basic Law (adopted 1949). For the view, however, that Germany abolished the death penalty in response to the Allied Powers’ imposition of the death penalty on war criminals, see C. Lane, “The Paradoxes of a Death Penalty Stance,” *The Washington Post*, June 4, 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/03/AR2005060301450.html>